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October 6, 2016

Honorable William F. Kuntz
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Nicholas Taylor v. The City of NY, et al*
14 CV 5727 (WFK)(MDG)

Your Honor:

This office represents Nicholas Taylor with regard to serious injuries he sustained on October 1, 2013. This letter is in response to the letter dated September 29, 2016 by Daniel Saavedra, from the New York City Law Department, on behalf of the City of New York and Police Officer Andrew Kamna ("defendants").

Mr. Taylor claims he was unlawfully searched, falsely arrested and subject to excessive force on October 1, 2013 by P.O. Kamna. Specifically, Mr. Taylor claims that P.O. Kamna, forcibly removed him from his car and while doing so, intentionally caused his head to strike the vehicle's door frame on the way out. Mr. Taylor was then handcuffed and searched. Then, while placing the plaintiff into the patrol car, P.O. Kamna for the second time, intentionally caused Mr. Taylor's head to strike the door frame.

The defendants intend on moving for summary judgment claiming that there are no material issues of fact for a jury to consider regarding all of the plaintiff's claims, which include false arrest, excessive force, municipal liability and pendant state law claims.

A. False Arrest

Defense counsel claims that it is undisputed that at the time of the arrest, the plaintiff's vehicle was partially on the public sidewalk abutting the garage from where the vehicle was removed and attached as Exhibit B, a photo of the vehicle which he labeled "Photos of Arrest Location." However, that is not accurate. The plaintiff testified that the scofflaw agents were able to "nudge" the vehicle only "a little bit out of the garage" (See Exhibit A, Page

33). P.O. Kamna testified that he simply does not remember what parts of the vehicle were in the garage and what parts were on the sidewalk (See Exhibit B, Page 22). Quincy Taylor witnessed this incident and also states that the front of the car was only partially on the sidewalk and that the doors of the vehicle were inside the garage when the arrest took place (Exhibit C, Page 22, 25). Albert Taylor who also witnessed this incident, states that most of the car, including the driver door, was still in the garage when P.O. Kamna grabbed the plaintiff out of the car (See Exhibit D, Page 19, 25). This is significant as P.O. Kamna claims that one of the reasons he arrested the plaintiff was due to "disorderly conduct by virtue of creating a risk of public inconvenience." Specifically, he claims that the vehicle blocked the sidewalk causing pedestrians to have to walk in the street. Considering the car was barely sticking out of the garage calls his claim into question. It is noteworthy that there was a vehicle blocking the driveway at the time of the arrest and P.O. Kamna would not allow the plaintiff to back the vehicle up into the garage.

Defense counsel also claims that the plaintiff "refused multiple orders to remove himself from the vehicle," which is again inaccurate. P.O. Kamna even states that "after telling him two times he stepped out." (Exhibit B, Page 33). The plaintiff states that when P.O. Kamna first told him to get out of the car, he was surprised as it was his own family members that called the police to report a break in and he therefore couldn't understand why P.O. Kamna was asking him to exit his own vehicle and assist the scofflaw agents that broke into his garage. However, when P.O. Kamna told him again to get out, he complied. (Exhibit A, Page 35-36, 40). There was simply no basis to arrest him.

In fact, P.O. Kamna admitted at his deposition that after explaining to Sergeant McMullen "what had happened and why I was arresting Mr. Taylor…[he] told me that it was not an arrestable situation…we're not able to help repossession men or Scofflaw agents while they are performing official duties." (See Exhibit B, Pages 43-44).

As the defendant admitted that he was not supposed to arrest Mr. Taylor, and let him go as a result when his Sergeant informed him of this, it cannot be more clear that this was a false arrest.

B. Excessive Force

Defense counsel claims that P.O. Kamna was entitled to use force to remove the plaintiff from the vehicle as he did not comply with his order to exit. However, as discussed above, that is simply not true. According to P.O. Kamna, Mr. Taylor exited the vehicle on his own without incident and there was obviously no reason to use physical force, which he claims he didn't use (Exhibit B, Pages 33-34). In fact, he also states that once Mr. Taylor agreed to step out of the vehicle, the plaintiff was cooperative from that point forward (Id at 72). He completely denies any use of force. Mr. Taylor on the other hand, as well as the witnesses that were deposed, state that as he was stepping out of his vehicle after agreeing to comply with P.O. Kamna's order, Kamna grabbed him and forcefully pulled him out of the vehicle causing him to hit his head on the door frame (Exhibit A, Page 36, 39-40). Then, after handcuffing and searching him, he intentionally slammed his head into the patrol car while placing him inside of it (Id at 42). Again, even P.O. Kamna admits that the plaintiff did not resist arrest and was cooperative once he stepped out of the first vehicle (Exhibit B, Page 72). There was therefore no reason to use such excessive force.

Furthermore, after the second strike to his head, the plaintiff testified that he was immediately disoriented, dizzy and nauseous. (Exhibit A, Page 42). He felt as if he was hit with a bat (Id at 45). As soon as he was released, he was nauseous and went inside and vomited (Id at 43). He went to Methodist Hospital that evening and was diagnosed with a concussion and post-concussion syndrome (Id at 45).

Over the next few months, he had constant headaches and treated them on his own, mostly with warm compresses. He did not have any health insurance at the time and was therefore unable to see any doctors. However, after about 6 months, he obtained insurance and immediately went to see Dr. Gerard Sykes on April 21, 2014 at Montefiore who diagnosed him with a concussion. He made the same complaints the next time he saw him on July 8, 2014, at which time he prescribed Naproxen for his severe headaches, which he was to take twice a day. He followed his instructions.

On August 27, 2014, he saw Dr. Steven Grenell, a neurologist, who was referred to him by Dr. Sykes. Dr. Grenell's notes discuss the head trauma, the fact that he was dazed and had been vomiting as a result and has had daily headaches ever since this incident. He also noted bilateral throbbing, photophobia, poor sleep and neuropathy. On September 17, 2014, Mr. Taylor was rushed to St. Johns Riverside Hospital where he was diagnosed with a perforated ulcer which required surgery. The hospital records indicate that the cause of the ulcer was h.pylori and NSAID use (NSAID = Nonsteroidal anti-inflammatory drugs), which was the Naproxen he had been taking for the previous two and half months for his headaches.

Mr. Taylor had to make several follow ups with regard to his ulcer and is now left with a terrible scar on his stomach as a result of the surgery, which he intends on having surgery to remove. Nicholas has also continued to treat on a regular basis with regard to his headaches.

Recently, Dr. Jay K. Mehlman, a Board Certified Gastroenterologist reviewed the plaintiff's legal file and medical records and concluded that he was prescribed a PPI along with his Naproxen was taking the appropriate prophylaxis which should have mitigated any preexisting conditions and yet still developed what seems to be an NSAID induced ulceration ultimately requiring surgical intervention. He therefore concluded with reasonable degree of medical certainty that the Naproxen that he had been taking for the headaches he had been experiencing since the incident of October 1, 2013, for almost 2.5 months leading up to his admission at St. John's Riverside Hospital on September 17, 2014, is causally related to his developing a perforated ulcer, resulting surgery and scarring. His report is annexed as Exhibit E.

Clearly, the injuries plaintiff is claiming are not *de minimus* and are sufficiently serious to rise to the level of a constitutional violation.

C. Municipal Liability

In *Williams v. City of White Plains 718 F. Supp 2d 374,* the court ruled that a while a municipality cannot be held liable under section 1983 solely on a respondeat superior theory, it can be held vicariously liable under state claims of assault by its police officers. The court denied summary judgment to the City of White Plains on the assault action brought by plaintiff under state law. "The remaining state law claim of assault and battery against the City of White Plains is alive due to the potential for vicarious liability for action of its police offices as its employees." Here too, the Court should allow plaintiff's claims of municipal liability as the City may be held vicariously liable for the assault and battery by P.O. Kamna on the plaintiff.

D. Pendant State Law Claims

As the plaintiff's claims for false arrest and excessive force are valid, the Court should exercise supplemental jurisdiction as to the pendent state law claims.

Respectfully submitted,

JEREMY SCHIOWITZ

By E.C.F.

The City of New York
Law Department
100 Church Street
New York, New York 10007
Attention: Daniel Saavedra, Esq.

Exhibit A

A. Yes, they were pulling the car trying to move it as I'm sitting in it.
Q. And they got it a little bit out of the garage?
A. Yes, they nudged it. It didn't want to move anymore.
Q. Who had the keys to the car?
A. I did.
Q. On your person?
A. Yes, they were in my pocket.
Q. While you were sitting in the driver's seat?
A. Correct.
Q. Did anyone ever ask for the keys to the car?
A. No, they didn't ask me for any of that.
Q. Did these people ever identify who they were working for?
A. No.
Q. How did you come to learn that they were Scofflaw agents?
A. Until the police arrived.
Q. What happened when the police arrived?
A. When the police arrived they were -- we were still asking for paperwork, we were telling them we don't know who these people were and that they broke into the garage and the police, I guess he was talking to the police in front of the driveway and saying that they had to

repossess the car and he started talking to the police.
Q. Who started talking to the place?
A. Julian Santos.
Q. So you're saying that when the police arrived Mr. Santos was the first person to communicate with the officers?
A. Yes.
Q. At this point were you still sitting in the driver's seat of the car?
A. Yes.
Q. How many police cars showed up to your father's house?
A. About two or three.
Q. At the same time?
A. They arrived one after another.
Q. So one arrived first?
A. Yes.
Q. How many police officers were in that vehicle?
A. Two of them. I can't give you an exact number. I saw two officers come up and approach.
Q. And that's when Mr. Santos was repossessing the car to the officers?
A. Correct.
Q. How do you know that's what he was saying?
A. Because he was maybe five feet away from me at

the front of the car while I was sitting there with the door open.

Q. Did there come a point in time when the officers spoke to you?

A. Not at that exact moment. They were still waiting for the other squad cars to come. I don't know who that was that arrived but I know that officer -- I don't know the pronunciation of his name, Kamana, was in that car with the other officer.

Q. To clarify, Officer Kamana, the Defendant in this case, he wasn't the first officer on the scene?

A. No, he wasn't.

Q. So the first two officers showed up, they talked to Mr. Santos and they waited for Defendant Kamana to show up?

A. Correct.

Q. Once Officer Kamana arrived what happened next?

A. When Officer Kamana arrived there basically were words exchanged between him and I and it was just he was talking about -- he was trying to figure out what was going on I guess at first and Julian and him were talking. I don't know the period of time. But people were conversing at that time. Then he told me that I had to get out of the car. He told me that, you know, you have to get out of the car and I told him I was asking him why do I have to get out, you know, they're in the wrong, they broke into my garage and I'm trying to get in touch with my finance company which I only had but so long to do that but no luck with that and Kamana basically kept insisting I get out and finally I said fine I will comply because I'm not going to go against his word and as I'm stepping out to get out he grabbed my left arm and yanked me out of the car and hit my head on the roof of the car basically on the way out on my left side of my head.

Q. Okay, I'm going to break it down.

When he arrived you are saying he came right up to the car to talk to you or did he speak to someone else?

A. At first he spoke to Julian.

Q. He spoke to Mr. Santos first?

A. Yes.

Q. And Mr. Santos was still standing within earshot of where you were?

A. Yes, right toward the front on the left side of the car.

Q. Did you hear what their conversation was about?

A. He was basically telling me yes that we have to take the car and, you know, they're not letting us take the -- they are at not letting us take the car just pleading his case to him and that's when Kamana came back to me and told me to get out of the car.

Q. Before he told you to get out of the car did you explain why you were in the car?
A. Yes.
Q. You said that you told him that you were trying to get in contact with your financing company?
A. Yes.
Q. How were you trying to do that?
A. My father and my brother were calling because Maria Espinal (phonetic), I think she is the one at Dependable who I usually contact to make my payments, that's who I was trying to reach.
Q. They were trying to call her on the phone?
A. Yes.
Q. But they couldn't reach her?
A. Yes.
Q. At this point with the police on the scene had anyone explained to you why your car was being repossessed?
A. No, there was still no word of what was going on. They didn't explain anything. The police just were insisting I get out of the car. That's it.
Q. Had anyone ever showed you any documents?
A. No.
Q. You said that you and Officer Kamana exchanged words, what did you mean by that?
A. He was asking me my side because there's always

two sides in the story. I explained to him -- I told him I was trying to call my finance company. Because at this point my brother and my father are standing in the doorway on the left, it's on the left side of the garage if you're facing toward the street. They're trying to call the company and he's being patient at that time, I guess he's waiting to see what happened with that and it just -- I guess it was a matter of time where he said I'm not waiting, I'm not dealing with this anymore. I don't know. That's when he decided to tell me to get out of the car.

Q. You said before there was a boot on your car?

A. Yes. There was a yellow boot that was put on there at some point in time.

Q. By who?

A. I don't know which one of them put it on. Like I said, when they were pulling the car and edging it and doing everything I was sitting in the car. My father and my brother have an outside view of what was going on. You can't see. The driveway is really slim too. It's hard to explain.

Q. So to clarify, you were saying that the people who were trying to repossess your car put a boot on your car?

A. Yes, at some point they put a boot on it while I was in it. I don't know what they were doing. Like I said, they were trying to move the car the whole time. But when I got in the car they must have put a boot because they didn't want me to go anywhere. It wasn't like I could have gone anywhere because there was van blocking the driveway.

Q. So they put a boot on so you couldn't move the car?

A. Yes, I guess that's what happened. I was in the car. I wouldn't know. It's just hearsay.

Q. Could you approximate how much time elapsed between when the officers arrived and when you were told to get out of the car?

A. I wouldn't be able to. It was probably five minutes, ten minutes of basically seeing what's going on.

Q. Five to ten minutes you would say?

A. Yes.

Q. When Officer Kamana told you to get out of the car did you say anything?

A. That's when I said, you know, why do I have to get out of the car, you know, I was explaining to him I'm sitting in my driveway and I'm trying to call the finance company. That was all I said to him. After that -- I don't know if that's what escalated his actions or what it is, but I'm sitting in my car and he told me to get out so I just got out because I was trying to get out when I put my foot down to get out that's when he yanked me out of the car.

Q. To clarify, how many times did he ask you to get out before he --

A. A couple times, two times.

Q. And the first time he asked you you told him everything you just said?

A. Yes.

Q. And the second time?

A. I complied. As I'm complying, like I said, I got yanked out of the car.

Q. You said he grabbed you, do you remember where specifically he touched you?

A. It was my left arm.

Q. He grabbed you from your left arm. Did he grab you anywhere else other than your left arm?

A. At that time, no. He just completely grabbed my arm to pull me out.

Q. Did he manage to pull you out just by grabbing your left arm?

A. Yes, just pulling full force.

Q. Was he using only one arm to grab you?

A. Both arms, both hands.

Q. So both of his hands on your left arm?

A. Yes, correct.

Q. And he pulled you out of the car?
A. Yes.
Q. As he was pulling you out of the car your head hit the door frame?
A. Yes, the top of it. Because the car is low. So if you go to get out of it you have to duck down or crouch but I just hit my head on the top of it.
Q. What part of your head did you hit?
A. My left side.
Q. Did this cause you to bleed?
A. No.
Q. After you were taken out of the car what happened?
A. After I was kind of disoriented at this point because I hit my head pretty hard. While I'm standing there he cuffs me, he handcuffed me, then he started searching through my pockets.
Q. Did you resist being handcuffed?
A. No, not at all.
Q. What happened after you were handcuffed and he searched your pockets?
A. He found the keys on me. I had my cell phone, my wallet, found the keys and basically handed them to the Scofflaw agent.
Q. Did there come a time where you were placed into

the squad car?
A. Yes, after they found the keys he brought me over to the squad car.
Q. When you say he are you referring to Officer Kamana?
A. Officer Kamana, yes.
Q. Did Officer Kamana place you into the squad car?
A. Yes.
Q. Where were your hands when he was placing you into the squad car?
A. He basically finally took both hands off my arm when he was escorting me and he went to put my head in and then he slammed my head onto that car, onto the squad car getting in.
Q. So he had his hand on your head?
A. Yes, on the left side of my head.
Q. Was he trying to guide you into the squad car?
A. No, he put forth into slamming my head into that car.
Q. Did you say anything to the officer at this point?
A. No, I was pretty dizzy and nauseous at that point.
Q. Did you complain about being dizzy and nauseous?
A. No, I didn't say anything, I was sitting in the

car -- he just closed the door and slammed the door and that was it, I was sitting in the car and I am trying to figure out what's going on looking backwards in the car.

Q. What happened after you were placed in the squad car?

A. I don't know how long he had me there but I -- while I was detained and sitting there he finally comes and opens the door and lets me out and then he under his breath he utters whatever he said to me, you know, and which I stated in the complaint, he was like I didn't know why black people buy these things they can't afford.

Q. At that point what happened?

A. After that I'm still standing there and then I guess they released off the cuffs and I guess at that point they released me out of the cuffs and I walked back to the doorway, I'm still dizzy at this point, I ran downstairs maybe for two minutes because I had to throw up, I went downstairs, threw up, came back up. That's what happened at that time.

Q. Who took your handcuffs off?

A. Officer Kamana.

Q. So besides Officer Kamana did you have any other interactions with other officers?

A. It was just him.

Q. Did he say why he was taking the handcuffs off

you?
A. No, he just released me.
Q. Did he give you any paperwork?
A. No. No summons, nothing.
Q. When you were placed in the squad car you said you hit your head again, which --
A. The right side on the second time.
Q. You said this caused you to be dizzy and nauseous?
A. Yes.
Q. Did it cause any outward bleeding?
A. No.
Q. Did you talk to any other officers besides Officer Kamana?
A. No, it was just him. I didn't really talk to anybody else.
Q. Can you approximate how much time passed while you were sitting in the squad car?
A. I don't really know at that point. I'm dazed.
Q. Would you say it was less than ten minutes?
A. I can't even tell you. I don't know. To state how long I was in there would be wrong. I don't know. I was -- that's how sick and hurt I was at this point.
Q. So your testimony under oath is you were so sick you couldn't approximate how much time you were in

handcuffs?
A. Yes. I felt like I just got hit with a bat.
Q. Did you ever have any concussion issues in the past?
A. No, nothing.
MR. SAAVEDRA: Off the record.
(Whereupon, an off-the-record discussion was held.)
Q. Let's talk about the injuries that you sustained as a result of this alleged incident. Could you explain the physical injuries that you sustained as a result of this incident?
A. I basically had a concussion. When I went to Methodist initially they told me that I had a concussion, to go home, ice my head and basically lay down and follow up with my physician to make sure everything was okay. Because I didn't get any X-rays that day or anything like that. So they just told me, you know, go home and see what happens.
Q. Besides the injury to your head, the concussion, did you suffer any other physical injuries as a result of this incident, like immediate?
A. Well, I had wrist -- initially the tingling in my fingers from the handcuffs, but...
Q. So now you're saying that your wrists hurt as

Exhibit B

A. KAMNA

Q. When you arrived there, did you see an orange Porsche?

A. Yes.

Q. Where was it when you first arrived?

A. When I first arrived, it was on the sidewalk.

Q. Was it completely on the sidewalk or was any part of it in the garage or in the street or anything else?

A. I don't remember what parts were in the garage and what parts were on the sidewalk, I didn't take measurements while I was there.

Q. Do you recall at all whether any portion of the vehicle was still within the garage?

A. I don't remember.

Q. I just want to try to get a little description of the sidewalk. Does the driveway basically go over the sidewalk, is it a part of the sidewalk, the driveway?

A. What do you mean by go over?

A. KAMNA

what happened next?

A. I told him to step out of the vehicle I believe approximately two to three times and he did step out of the vehicle after the second time, after telling him two times he stepped out.

Q. Did he exit the vehicle on his own?

A. Yes.

Q. Did you at any point assist with him getting out of the vehicle?

A. What do you mean by assist?

Q. Did you have your hands on him or his clothing at all while he was still sitting in the car?

A. No.

Q. Did you at any point come into contact with Mr. Taylor?

A. Yes.

Q. When was the first time that you came into contact with him?

A. After he had stepped out of the vehicle, I placed him in handcuffs.

Q. Did you notice Mr. Taylor have

A. KAMNA

any difficulties getting out of the vehicle?

A. What do you mean by difficulties?

Q. Did he hit his head at all while exiting the vehicle?

A. No, he did not.

Q. After you told him to exit the vehicle and he did exit the vehicle, was the first thing you did put handcuffs on him?

A. Yes.

Q. Did you search him at all?

A. After he was put in handcuffs, yes.

Q. So the first thing you did was put the handcuffs on?

A. Yes.

Q. Did you put it behind his back?

A. Correct.

Q. Did you say anything as to why you put handcuffs on?

A. No.

Q. Why did you put handcuffs on

A. KAMNA

Q. Meaning Mr. Taylor?
A. Right.
Q. From the time you put the handcuffs on him until he entered the vehicle, did Mr. Taylor say anything to you, were you still speaking?
A. I don't remember him saying anything to me.
Q. Do you recall speaking to anyone else during the arrest until he was in the vehicle?
A. I'm sorry, just clarify it.
Q. From the time you put him in handcuffs until he entered the vehicle, did you have conversations with anyone else?
A. No.
Q. Do you recall anyone speaking to you at all during that time period?
A. No.
Q. After you called the supervisor, what was the next thing that happened?
A. The supervisor arrived on the scene, I explained to him what had happened

A. KAMNA

and why I was arresting Mr. Taylor at which point the supervisor told me that it was not an arrestable situation.

Q. What was the name of the supervisor?

A. Sergeant McMullen.

Q. Do you know Sergeant McMullen's first name?

A. I don't.

Q. He is from the 73rd Precinct?

A. He was assigned to the 73rd Precinct at that time, I don't know where he is now.

Q. Is he still working for the NYPD?

A. I don't know.

Q. Did he explain why it was not an arrestable situation?

A. Yes, he did.

Q. What did he say?

A. He told me something along the lines of we're not able to help repossession men or Scofflaw agents while they are performing official duties.

A. KAMNA

get out of the car?

A. No, he didn't.

Q. You testified that he did eventually agree to exit the car on his own, correct?

A. Correct.

Q. From the moment that he began to exit the car, was he cooperative at that point?

A. He had already disregarded requests and orders so he was not cooperative until he stepped out of the vehicle and when I placed him into handcuffs, he did not resist.

Q. Did you inform him at any point that you were going to place him under arrest?

A. I don't remember.

Q. Other than Mr. Taylor according to you being uncooperative and that he refused to exit his vehicle, did he appear to be dangerous at all?

MR. SAAVEDRA: Objection. You can answer.

Exhibit C

A. Yes.
Q. He was sitting inside the vehicle?
A. Yes.
Q. The vehicle was where at this point?
A. At this point, the vehicle was halfway in the garage and -- correction for halfway, it was semi in the garage and partially on the sidewalk.
Q. The garage at your father's place, it opens up and is the sidewalk right there?
A. Yes, there's about a two-foot slab of cement and there's the sidewalk.
Q. How did the car get halfway out of the garage?
A. In the midst of --
MR. SCHIOWITZ: Note my objection to halfway. He said partially.
Q. How did it get out of the garage?
A. In the midst of it -- in the midst of conversating with the -- the words that were exchanged between my father and Nick and the Scofflaw people, they were moving the vehicle. They had tools and they were pulling and pushing.
Q. Just to be clear, the Scofflaw people were the ones that pushed the car out of the garage?
A. Yes.
Q. Just to summarize, while you were speaking with

hear their conversation, yes.

Q. And you were still by the door of your father's apartment?

A. Yes, the door is maybe four feet away from the driveway.

Q. What happened after Officer Kamana asked Nick to step out of the car?

A. When Nick asked -- when Officer Kamana asked Nick to step out of the Porsche?

Q. Yes, what happened after that?

A. When he asked him to step out of it, Nick was bringing his leg out of the vehicle to step out and Officer Kamana then grabbed Nicholas, pulling his arms and it was a tight space in between the car door and the driveway wall so after pulling Nick up, he hit like several parts of his body trying to wiggle him and pull him out of the vehicle because it was a tight space. Nick wasn't resisting. He was volunteering to exit the vehicle, but the officer was physically pulling him out of the tight space.

Q. Let's break that down. While this was all happening, where was the African American officer that you said you were speaking to?

A. He was on the sidewalk.

Q. You weren't talking to him anymore?

A. No, once the physical contact came in between

Exhibit D

was more in the garage than out of the garage because I believe the guys tried to pull the car out somehow, the Spanish guys.

Q. At some point, the repo guys managed to push the car somewhat out of the garage?

A. I saw one guy pushing it and several guys in the front pulling it so to me -- a car is supposed to have brakes. They didn't have the keys. I don't know how they got the car that far out of the garage. As I remember, the car was still in the garage.

Q. But a portion was outside of the garage?

A. A portion, yes.

Q. That was due to the actions --

A. Of the three guys.

Q. -- the repo men that you described?

A. Hang on a second. I'm thinking ahead of my time. I believe the car was still in the garage. I believe the car was still in the garage when the police officer came. I'm not sure if they pulled it out while we was talking or if it was out halfway. I know it wasn't out the garage. At one point it was in the garage when I came upstairs -- I'm sorry, at one point it was in the garage the night before or in the day. The second movement was like a little out, a third out and the third movement was totally out. I'm just trying to remember. It's been three years.

grabbed him.

Q. Grabbed him where?

A. By his arm, his clothing and several other officers assisted.

Q. They grabbed which arm, if you remember?

A. I guess it could be maybe his -- I guess it would be the closest arm, the left arm.

Q. You said several officers?

A. After the first officer grabbed him, the rest convened. From there on, they were assisting the officer. It wasn't just one officer, but Kamana was the first one.

Q. Were you still standing in between the sidewalk and the garage at this point when this was going on?

A. Yes, I was right in front of the garage.

Q. Was your view obstructed by any other person?

A. No, not at all because I was more towards the left side of the garage facing the garage so I could see across because no one was in front of me.

Q. Did you see Nick hit his head when he was getting out of the car?

A. Yes, I seen him hit his head. They pulled him out -- they pulled him out and I said hey, that's wrong you're abusing him. It's only a small wedge to get him out of the vehicle. The walls are so close to the garage. The left and right -- you really have to squeeze to get in the

Exhibit E

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April 3, 2016

RE: Nicholas Taylor
D/I: October 1, 2013

Please note that I have reviewed the following records which were submitted to me in order to form an opinion as to the cause of Mr. Taylor's perforated ulcer:

- NY Methodist Hospital
- Montefiore – Dr. Gerard Sykes
- Riverdale Gastroenterology & Liver Diseases – Dr. David Stein
- Dr. Steven Grenell
- Advanced Endoscopy Center
- St. Johns Riverside Hospital
- Notice of Claim, dated October 16, 2013
- 50H transcript of Nicholas Taylor, dated March 26, 2014
- Deposition Transcript of Nicholas Taylor, dated January 16, 2016
- Photographs of Nicholas Taylor's scar

Patient is a 30 year old man with a past medical history of erosive duodenitis who was found to be H pylori positive on or about May 13, 2014. Several months later, on or about July 8, 2014, the patient was started on NSAIDs (Naproxen) for headaches which were ascribed to a head injury he sustained on October 1, 2013, along with a PPI (Dexilant) as GI prophylaxis. The patient was subsequently admitted with abdominal pain and was diagnosed with a perforated ulcer and underwent a surgical repair.

It is my opinion that the patient's NSAID use directly contributed to his perforated ulcer.

While several studies have demonstrated a synergistic association between H pylori and NSAIDs regarding peptic ulcer disease (PUD), synergistic causality has not been definitively established. Regardless, several studies have clearly demonstrated that even given this association, the eradication of H pylori prior to initiation of NSAIDs has not shown to significantly lower the risk of developing NSAID induced PUD (see GUT 2002; 51:329 and Lancet 1998; 352:1016).

In light of these studies, although Mr. Taylor was diagnosed with having H. pylori prior to starting his NSAID regimen of Naproxen, the PPI that he was taking along with the Naproxen should have mitigated any possible contributory effect of the H pylori infection. Therefore, the fact that the H. pylori was not treated prior to initiating the course of Naproxen should not have increased his risk of developing a perforated gastric ulcer.

This protective effect of a PPI to prevent peptic ulcer disease in patients taking NSAIDs, is also cited, in the "Guidelines for Prevention of NSAID-Related Ulcer Complications" found in *The American Journal of Gastroenterology* (vol 104, March 2009 pages 728-738), a New England Journal of Medicine study was cited which states that "eradication of H pylori alone is not as effective as PPI prophylaxis to prevent NSAID induced ulceration" *(N Eng J Med.* 2001;344 (13):967). That study concluded "Omeprazole (PPI) is superior to eradication of H pylori in preventing recurrent bleeding in patients who are taking other NSAIDs."

See also *Alimentary Pharmacological Therapy*(2005;21 (12):1411) whose study concluded," Eradication (of H pylori) seems less effective than treatment with a maintenance PPI for preventing NSAID-associated ulcers."

Finally, *The American journal of Gastroenterology*,(ibid) in their guidelines cites an additional study that concluded that "in the patients receiving Naproxen, PPI therapy was clearly superior to H pylori eradication in preventing recurrent bleeding" (*Aliment Pharmacol Therapy* 2002;16:167-80).

In conclusion, the patient in question who was prescribed a PPI along with his Naproxen was taking the appropriate prophylaxis which should have mitigated any preexisting conditions and yet he still developed an ulceration ultimately requiring surgical intervention. It is therefore my opinion, with a reasonable degree of medical certainty that the Naproxen that Mr. Taylor had been taking for the headaches he had been experiencing since the incident of October 1, 2013, for almost 2.5 months leading up to his admission at St. John's Riverside Hospital on September 17, 2014, is causally related to his developing a perforated ulcer, resulting in surgery and scarring.

Please note that the purpose of this review and opinion is not for care, treatment, or consultation. No doctor-patient relationship developed as a result.

I, Dr. Jay K. Mehlman, being a Gastroenterologist duly licensed to practice medicine in the State of New York, pursuant to the applicable provisions of the Civil Practice Law and rules Section 2106, hereby affirm under penalties of perjury that the statements contained herein are true and accurate to the best of my knowledge and information.

Sincerely,

Jay K. Mehlman, M.D.